

Stakeholder Assessment for the Formation of a Multi-Stakeholder Group (MSG) for the United States Extractive Industries Transparency Initiative (USEITI)

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About the Consensus Building Institute

The Consensus Building Institute (CBI) is a not-for-profit organization founded in 1993 by leading practitioners and theory builders in the fields of negotiation and dispute resolution that empowers stakeholders — public and private, government and community — to resolve issues, reach better, more durable agreements and build stronger relationships. As a non-profit organization, CBI is committed to ensuring its work is transparent and addresses the interests and needs of all involved parties.

Through an agreement with the U.S. Department of the Interior (DOI), the U.S. Institute for Environmental Conflict Resolution, an independent, nonpartisan, and impartial federal program of the Udall Foundation, contracted with CBI to provide neutral assistance with completing Step 4 of the U.S. Extractive Industries Transparency Initiative (USEITI) process: *“The government is required to establish a multi-stakeholder group to oversee the implementation of the EITI.”*¹ EITI Requirement 4(h)(v) notes that the “government may...wish to undertake a stakeholder assessment” as part of forming the Multi-stakeholder Group (MSG). CBI was tasked with gathering input via independent interviews across all three core EITI sectors (civil society, industry and government); facilitating public listening sessions seeking similar input; collecting public comments; and, informed by input gathered through the above venues, providing recommendations for MSG formation.

CBI is not an advocate for any particular outcome or interest and strives to conduct its work in a fair, deliberate, and non-partisan fashion. CBI is bound by the Association for Conflict Resolution’s (ACR) Code of Ethics: “The neutral must maintain impartiality toward all parties. Impartiality means freedom from favoritism or bias either by word or by action, and a commitment to serve all parties as opposed to a single party.” More about CBI can be found at www.cbibuilding.org. CBI Managing Director Patrick Field and Senior Associate Rachel Milner Gillers conducted the interviews and wrote this assessment report. Saman Hussein, internal facilitator with DOI’s Office of Collaborative Action and Dispute Resolution (CADR), conducted selected tribal and federal government interviews with CBI and is similarly bound by ACR’s Code of Ethics.

The U.S. Institute for Environmental Conflict Resolution is an impartial, nonpartisan federal program that provides professional expertise, services, and resources to all parties involved in environmental disputes involving the federal government. Congress created the U.S. Institute in 1998 with the mission to assist public and private parties in resolving environmental, natural resources, and public lands conflicts. The U.S. Institute is part of the Udall Foundation, an independent federal agency.

¹ For a complete list of EITI requirements, see <http://eiti.org/document/rules>

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Executive Summary

1. Background and Purpose

On September 20, 2011, President Obama announced the U.S.' intention to implement EITI as a signature initiative of the National Action Plan for the Open Government Partnership. That October, the President announced that Secretary of the Interior Ken Salazar "and his staff will work with industry and civil society to develop a sensible plan to disclose relevant information about revenues from oil, gas, and mining assets, and to enhance the accountability and transparency of our revenue collection efforts."² DOI was thus officially charged with shepherding the formation of the USEITI MSG.

This document serves as a draft record of the Consensus Building Institute's independent findings and recommendations regarding MSG formation based on input from a public comment period, public listening sessions, and targeted multi-sector interviews. Publication of this document marks the commencement of an additional public comment period and round of listening sessions for the purpose of gathering feedback on the proposed options for convening the USEITI MSG. Please note there may be other important stakeholders and experts that likely have different concerns and viewpoints who were not interviewed. For instance, more formal tribal consultation is only beginning and a fuller range of views on tribal interests is not included in this draft report. CBI is solely responsible for the content of this report and any errors and omissions.

2. The Potential Benefits and Challenges of EITI Implementation in the U.S.

Benefits and concerns cited reflect an array of perspectives, including domestic, international and sector-specific viewpoints. Key opportunities, both for the U.S. as a whole and for specific sectors, range from U.S. global leadership on transparency, improving domestic transparency, and creating an inclusive multi-stakeholder process, to improving relations between industry and the public and building public trust around resource governance. Stakeholders identified unique challenges of implementing EITI in the U.S., including but not limited to defining and ensuring adequate civil society representation; defining scope in light of complicated governance and the size, scale and diversity of U.S. industry; alignment of U.S. policies and regulations; process and implementation-related costs; the legality of convening an independent MSG; and the challenge of providing sufficient education and outreach.

3. Convening a Multi-Stakeholder Group

EITI requires that implementation be driven by a multi-stakeholder group including representatives from civil society, industry, and government. Most commenters noted the importance of balancing inclusiveness with efficiency and suggested the MSG comprise 10-25 participants. Stakeholders provided a range of advice on the balance of sectors within the MSG, but almost all commenters suggested an equal balance of representatives across sectors to ensure the practice and perception of fairness. Commenters named criteria both for overall and sector-specific representation on the MSG and identified a range of potential roles on the MSG including principals, alternates, advisors or technical or other liaisons. Most commenters strongly advised allowing civil society, industry, and government to self-select representation on the USEITI MSG in order to preserve process legitimacy and the spirit of inclusivity. A smaller number of commenters stated that the government should be empowered to select the MSG with input from the sectors, given its role as convener and potential

² <http://www.whitehouse.gov/the-press-office/2011/10/25/white-house-announces-secretary-ken-salazar-administrations-senior-offic>

role in developing the “regulation, administrative directive, or law of congress that puts the seal on mandating all companies to disclose.” Others are concerned that convening the MSG through a Federal Advisory Committee Act (FACA) process would violate the spirit of EITI self-determination not to mention be cumbersome and overly bureaucratic.

4. Options for Action

Based on the public listening sessions, written public comment, detailed input from over sixty interviewees, dialogue with the Department of the Interior EITI team, and an interagency working group, CBI puts forward recommendations and, in some cases, options for further public and stakeholder considerations, including the following components:

- Who should establish the initial scope and direction of EITI implementation in the US?
- Should the MSG be initially established as in interim or full MSG?
- What decision rule should the MSG use to reach its decisions?
- What is an appropriate size for the MSG and how should sufficient balance be established across sectors?
- What might be the role of tribes and tribal allottees?
- How might states be involved?
- Criteria for representation individually and across the MSG
- Selection of Representatives
- Administrative and legal options for establishing the MSG

The public is invited to comment on the viability of any of the above recommendations, and in particular to assess the potential for forming the MSG as either 1) a non-federal entity or body; 2) a federal operating committee or other kind of Congressionally-created entity; or 3) a federal advisory committee, convened under the Federal Advisory Committee Act (FACA), convened by either DOI or the Executive Office of President, creating either new FACA Committee or utilizing an existing federal advisory committee, the Royalty Policy Committee (RPC), or the creation of a subcommittee within the RPC. Included as appendices to this document are a list of stakeholders interviewed by sector, CBI’s interview protocol, and a series of questions delineating public input needed on assessment findings and recommendations.

1. Background

a. EITI global standard: brief history and structure

In 2002, Former British Prime Minister Tony Blair launched the voluntary Extractive Industries Transparency Initiative (EITI)³ to improve public reporting of monies transferred to governments by companies exploiting natural resources. EITI provides a voluntary and transparent framework for examining revenues in a given country by setting up a system in which industry reports to an independent party (a reconciler) the revenues it pays to the government for extraction, the government reports the payments it receives from industry, and that independent entity reconciles the data. The type of data to be reported and verified is decided upon by a Multi-Stakeholder Group (MSG) in each country comprising representatives from civil society, industry and government.

EITI is overseen by an international board of 20 members representing implementing countries, supporting countries, civil society organizations, industry, and investment companies. The EITI Board reviews and decides on country applications for “candidate” and “compliant” status, and evaluates whether a country maintains compliant status. The EITI International Secretariat, based in Norway, is responsible for coordinating EITI efforts worldwide. International EITI efforts are funded by individual countries and by the Multi-Donor Trust Fund managed by the World Bank. As of April 2012, 14 countries have achieved EITI compliance, and 21 countries are official EITI candidates. The United States is one of several other countries who have announced an intent to implement EITI. *EITI is a voluntary standard and does not have the power to enforce, implement, or require any action within the U.S.*

b. Sign on and intent by the U.S. and role of DOI

On September 20, 2011, President Obama announced the U.S.’ intention to implement EITI as a signature initiative of the National Action Plan for the Open Government Partnership. As a global leader in natural resource extraction, the U.S. holds top-three international rankings in natural gas, coal, and oil production.⁴ The U.S. Department of the Interior’s Office of Natural Resources Revenue (ONRR) collected \$11.16 billion in payments in 2011 for extraction for federal lands and rights.⁵ On October 25, 2011, President Obama announced that the Secretary of the Interior Ken Salazar would lead the U.S. effort to implement EITI,⁶ and on that same day Secretary Salazar committed to working with civil society, industry, and the American public to implement EITI.⁷ The above proclamations satisfy the first three of twenty-one steps required for full United States EITI (USEITI) compliance.⁸

³ For additional information about international EITI and participating countries, see www.eiti.org

⁴ See CIA World Factbook Country Comparisons at <https://www.cia.gov/library/publications/the-world-factbook/rankorder/rankorderguide.html>

⁵ Office of Natural Resource Revenue, U.S. Department of the Interior

⁶ <http://www.whitehouse.gov/the-press-office/2011/10/25/white-house-announces-secretary-ken-salazar-administrations-senior-offic>

⁷ <http://www.whitehouse.gov/blog/2011/10/25/leading-world-transparency-natural-resource-revenues>

⁸ <http://www.doi.gov/eiti/upload/EITI-Fact-Sheet.pdf>

c. Role of a Multi-Stakeholder Group (MSG)

A key requirement for EITI compliance is the formation of a MSG that is responsible for EITI implementation. The MSG need not mirror the international Board or MSGs in other countries, but it must include representation from a country's civil society, industry and government. The current EITI guidance does not define the above MSG sectors with any specificity. However, previous versions have suggested the following:

- **Civil society** (or what we might define in the U.S. as public interest groups), as defined by community-based organizations, non-governmental organizations (NGOs), or what we describe as non-profits or not-for-profits, and the media, trade unions, academic and research institutions, and faith based groups.
- **Industry** as defined by companies operating with the country, be that domestic or international entities, and business associations (i.e. trade associations or groups).
- **Government** as defined by the executive and legislative, including potentially subnational levels of government.

We will use the above general definitions for the purposes of this report. Specific roles of the MSG include working collaboratively to develop the country's EITI implementation work plan and application for EITI candidacy, and to design and implement the framework for achieving EITI compliance. As noted above, the scope of industries, lands, and payments to be included in EITI implementation must be determined by the MSG and included as part of the country work plan. The MSG ensures that a country's EITI framework is widely supported, informed by appropriate expertise, tailored to a particular country's laws, regulations, and culture, and implementable by government and industry.

d. Role of CBI and the Assessment Process

On February 24, 2012, DOI issued a Federal Register Notice requesting comment on the formation of the multi-stakeholder group (MSG) and U.S. implementation of EITI. Members of the public were able to provide written comments to Interior through the website and via mail or fax through April 9, 2012. During this period, in March 2012, DOI convened public listening sessions, facilitated by CBI, in St. Louis, MO; Denver, CO; Houston, TX; and Washington, DC, during which members of the public were asked to comment on how best to form the MSG responsible for USEITI implementation.⁹

In February-April 2012, CBI conducted 66 confidential interviews with stakeholders from civil society, industry, and government, as well as a small group of U.S.-based international EITI experts (see Appendix A for a full list of interviewees). Interviewees were asked to provide comments on the benefits and challenges of USEITI implementation, and input on MSG representation and selection (see Appendix B for CBI's interview protocol). Interviewees were identified by considering organizations active or representative of interests from the issues and sectors broadly

⁹ A summary of input provided during public listening sessions and via written comment to DOI can be found at www.doi.gov/eiti/upload/EITI-PLS-Summary.pdf

defined by EITI. These included non-governmental organizations focused on transparency, trade associations, academics, and others. The Department of the Interior identified a range of government agency personnel as well. In our conversations, interviewees identified additional potential contacts to interview. The following chart summarizes interviews by sector:

Sector	Industry	Government	Civil Society	Other
# Interviewees	25	22	17	2

This document serves as a draft record of CBI’s findings and recommendations based on input from the public comment period, public listening sessions, and targeted multi-sector interviews. Please note there may be other important stakeholders and experts that likely have different concerns and viewpoints who were not interviewed. For instance, more formal tribal consultation is only beginning and a fuller range of views on tribal interests is not included in this draft report. CBI is solely responsible for the content of this report and any errors and omissions.

2. The potential Benefits and Challenges of EITI implementation in the U.S.

Benefits and concerns cited below reflect an array of perspectives, including domestic, international and sector-specific viewpoints. Although most stakeholders were able to articulate varying levels of perceived benefits and challenges, some felt less prepared to comment than others. Several noted the need for additional outreach to better inform potential stakeholders on the drivers behind USEITI.

Potential opportunities cited, both for the U.S. as a whole and for specific sectors, include:

- U.S. global leadership on transparency
- Improving domestic transparency
- Creating an inclusive, empowering multi-stakeholder process
- Providing a forum for discussing benefits of extraction
- Strengthening tax collection
- Optimizing existing reporting structures
- Improving relations between industry and the public
- Building public trust around resource governance
- Strengthening relations between DOI and civil society

Stated concerns about U.S. implementation of EITI took shape in the following key themes:

- Defining and ensuring adequate civil society representation
- Complicated governance: federal system and tribal sovereignty
- Size, scale and diversity of U.S. industry
- Alignment of U.S. policies and regulations
- Cost of new or revised reporting systems
- Cost of the USEITI process itself (MSG + Secretariat)
- Information published might not be value added
- Legality of convening an independent MSG (vs. Federal Advisory Committee)
- Ambitious timeframe
- Insufficient education/outreach
- Sectors may have trouble self-organizing

a. Opportunities: For the nation as a whole

- i. **Global leadership on transparency.** The most frequent stated benefit of USEITI implementation is the role that the U.S. can play in “raising the level of international attention to EITI to make it a truly global standard.” The U.S. could be a leader in setting an example for other large resource countries like Brazil, South Africa, and China. Some stakeholders suggested that U.S. commitment to EITI implementation has already influenced countries considering EITI application. Others state it would be hypocritical of the U.S. to continue international EITI advocacy efforts without taking it on domestically. As an EITI compliant country, the U.S. would be both a financial supporter and an implementer. Finally, the U.S. has the opportunity to test the new and improved EITI rules, published in 2011.¹⁰
- ii. **Improving domestic transparency in the U.S. extractive industry.** Several commenters noted the high level of extractive revenue reporting already required in the U.S., and therefore do not perceive a domestic advantage in USEITI implementation. Others, however, would like to see more granular reporting, improved readability of published data, and reporting by industries or subnational governments that are not bound by current federal disclosure requirements. Tribes and tribal allottees¹¹ may have an interest in seeing different or increased reporting of revenues derived from trust lands. The EITI process may also be an opportunity to develop different or more comprehensive auditing procedures.
- iii. **Creating an inclusive, empowering multi-stakeholder process.** A key stated benefit of EITI is the opportunity for cross-sector dialogue and decision making, a “merging of government function and the companies or industries in the public sphere by incorporating civil society and [disseminating] all of this to the public.” EITI offers a bottom-up approach to policy formation, and by having the various sectors “at a table, [with] equal footing” the multi-stakeholder process can serve as a model for other policy matters.
- iv. **Providing a forum for discussing the benefits of extraction.** USEITI could provide opportunities for the public to discuss the benefits of extraction in the U.S. One stakeholder suggested there is currently “not enough healthy conversation” about the costs and benefits of extraction, and that USEITI could provide greater understanding among the public about the economic value of natural resource development for the U.S. as a whole. Public discourse may also provide a forum for communities currently benefiting from extractive revenue to suggest ways in which the federal government invests funds back into local institutions.

“If countries like the U.S. enter into it, there’s no stigma attached to being an EITI country.”

¹⁰ See *EITI Rules, 2011 Edition*, at <http://eiti.org/document/rules>

¹¹ As defined in 30 *USC* § 1702, an Indian Allottee is “any Indian for whom land or an interest in land is held in trust by the United States or who holds title subject to Federal restriction against alienation.” See <http://us-code.vlex.com/vid/sec-definitions-19217068>

b. Opportunities: For sectors

- i. **Strengthening revenue collection.** Through the third-party EITI reconciliation process, some commenters believe “more attention may be paid to what kinds of payments are or are not being made.” Given high instances of “settlements for underpayment,” better accuracy and external reconciliation could lead to recovery of lost revenue.
- ii. **Optimizing existing reporting structures.** Commenters from multiple sectors consider USEITI an opportunity to improve the “clarity and consistency of reporting structures,” thereby improving the timeliness and accuracy of payments. Some civil society and state interviewees noted the difficulty of procuring information about U.S. operations on federal lands. Review of existing reporting structures may in turn help improve overall transparency in the extractive industries.
- iii. **Improving relations between industry and the public.** Participation in EITI and increased dialogue with civil society presents an opportunity to repair the “relationship between the public and the extractive sector [that] is fraught with mistrust.” Some commenters cited that USEITI would effectively help give companies “the social license to operate” in the wake of concerns from controversial extraction techniques in the U.S. and the social and environmental impact of oil spills. In the process of USEITI outreach, companies with international EITI experience would have the opportunity to demonstrate for Americans their commitment to transparency worldwide.

“Information has to be beneficial – there is a risk that it won’t mean anything to people reading it.”
- iv. **Building public trust around resource governance and strengthening relations between DOI and civil society.** Some comments noted that USEITI would help advance government oversight in general, in addition to specifically addressing federal resource revenue management. With greater transparency, the public may have greater assurance that government “resources are properly developed and properly conserved.” In addition to discussing benefits specific to extraction, some believe USEITI could serve as a forum for dialogue on issues related to the nexus of energy and financial issues and could open up avenues for public discussion about increased domestic energy independence. Others feel strongly that USEITI should keep its focus solely on extractive revenues reporting. Several commenters noted USEITI is an opportunity for DOI, specifically, to engage with and improve relationships with the public. A range of concerns remain about the federal government’s ability to track extractive revenue, from the ways in which tribal allottees received payments as raised in the Cobell legal challenge, to the former Minerals Management Service (MMS) and significant concerns with their resource management. Multiple stakeholders believe that DOI is improving on these fronts and consider EITI an opportunity to further improve its transparency and stakeholder relationships.

c. Challenges

i. Defining and ensuring adequate civil society representation

The U.S. “civil society” includes a more limited number of groups focused on transparency and revenues and a much larger universe of groups who are focused on extractives, “good” government, tax policy, general public policy, and local concerns. In addition, there are thousands of investor organizations who may have a stake in the health and direction of the U.S. extractives industry and who may qualify as industry or civil society, as well as numerous academic institutions either generally or more specifically focused on extractives.

Civil society is probably the most difficult sector to adequately and fully define given that the U.S. is a diverse, large country with a very large “third” sector. Commenters noted that extensive outreach with civil society groups will be critical for building: a) an inclusive USEITI; and, b) adequate feedback loops between the MSG and regional organizations. The Publish What You Pay Coalition and individual organizations such as Revenue Watch, Oxfam America, Global Witness, ONE Campaign, and Transparency International are some of the most active groups in EITI internationally, while groups such as Project on Government Oversight, Taxpayers for Common Sense, and OpenTheGovernment.org specifically focus on U.S. government transparency particularly. Tribal allottee associations might also have an interest from a civil society perspective.

ii. Complicated governance

Government structure in the U.S. is significantly more complex than in most other EITI implementing or compliant countries. There are executive, legislative, and judicial branches with a separation of powers, numerous federal agencies with an interest in revenue and extractive issues, fifty states, each with their own interests and multiple agencies, counties who receive some federal oil and gas revenues back from the federal government, and over six hundred sovereign tribal nations. Federal agencies with related interests include the Department of the Interior and various offices within DOI such as the Office of Natural Resources, the Bureau of Indian Affairs, the Office of Special Trustee, and the Bureau of Land Management. The United States Department of Agriculture (USDA) Forest Service also has some limited extraction and coordinates with DOI for BLM management of mineral extraction on Forest Service Lands. Other federal agencies include the Department of Energy, the Securities and Exchange Commission, the Department of State, and the U.S. Treasury, including the Internal Revenue Service.

State-level associations who could play a role in USEITI include the National Governors Association, Western Governors Association, Western Land Commissioners Association, Interstate Oil and Gas Compact Commission, Interstate Mining Compact Commission, and/or State and Tribal Royalty Audit Committee (STRAC). Tribal entities who might play a role include one or more of the thirty-four tribes for which the federal government collects revenues in trust, and associations such as the National Congress of American Indians.

iii. Size, scale and diversity of U.S. industry

Extractive industries, as defined by the EITI International Secretariat, include the oil, gas, and mining industries.¹² The U.S. industry is a large sector, involved in payments to the U.S. Office of Natural Resources Revenue for federal lands and rights alone, comprising over 2,000 active companies with over 3,000 companies listed in the ONRR database. There are large multi-nationals, some U.S. headquartered, some not, private and publicly held companies, some domestic operating only companies, large, medium and small companies, companies with multiple extractives and some with only one. Industry associations cited as most likely to participate in USEITI are the American Petroleum Institute (API), the National Mining Association (NMA), the Independent Petroleum Association of America (IPAA), and the Council of Petroleum Accountants Societies (COPAS).

Of the \$11.6 billion in extractives revenues collected by ONRR, 90% is for oil and gas, 8% from coal, and the remaining 2% is for a number of other resources that are extracted, including carbon dioxide, copper, geothermal, hot water, lead, limestone, phosphate, potash, sand and gravel, sodium and sulfur, etc. Unlike other countries engaged in EITI, the U.S. has a great deal of gas, oil, and mineral production on privately-held lands.

Most stakeholders recommend including oil and gas in USEITI at the outset in light of preexisting reporting practices and the large percentage of U.S. extractive revenue to which these industries contribute. There is some debate about whether or how to include mining in the initial stages in addition to oil and gas since such mining revenues are substantially lower overall; however, other metrics for including mining were noted, such as environmental and social impact and a perceived “lack of financial benefit [mining] has traditionally carried to the U.S. government” under current statutes. Several commenters suggested that renewables would be too difficult to include in EITI scope, while some recommend they be considered by the MSG in early scoping deliberations.

Most commenters suggested that industry representation include oil and gas (onshore and offshore), sand, hard rock (especially metals such as copper), and coal. A small number of commenters also recommended that timber, geothermal, and fisheries be included. A few commenters stated that precious metals such as gold and silver should also be included though revenues from precious metals are handled differently than other products. Multiple commenters suggested piloting USEITI nationally with one industry (e.g. offshore oil and gas) or by starting in a state with only one industry. Scope of USEITI industries could be determined by impact, extraction technique, revenue, or those industries with less transparent reporting requirements.

iv. Alignment of national policies, regulations, and laws and international requirements for compliance.

Concerns emerged in interviews and in public listening sessions about the legality of USEITI and the relationship of the MSG to the U.S. government. Commenters probed whether or not USEITI is “extralegal” to the U.S. and wanted to make sure that whatever structural form

¹² See <http://eiti.org/resource/faq>

the MSG ultimately assumes is aligned with federal laws and procedures. The EITI rules do not require that MSG decisions become enshrined in domestic law, but many commenters feel strongly that some regulatory changes specific to USEITI implementation will be necessary to ensure “USEITI sticks.” Some stakeholders feel strongly that EITI be implemented “in a way that's consistent with the [international] mission and doesn't expand into other rulemaking or missions that are outside of what EITI is intended to be.” Specific statutes, regulations and guidelines cited as having potential relevance to USEITI implementation include the following.¹³

- Dodd–Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)
- Federal Advisory Committee Act (FACA)
- The Federal Income Tax Regime
- Freedom of Information Act (FOIA)
- Generally Accepted Accounting Principles (GAAP):
- The General Allotment Act of 1887 (the Dawes Act)
- General Mining Act of 1872
- Uniform Trade Secrets Act
- Paperwork Reduction Act

Statutes giving ONRR authority to collect royalties:

- Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA)
- Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 (RSFA)
- Geothermal Steam Act of 1979
- Indian Mineral Leasing Act of 1938
- Indian Mineral Development Act of 1982
- Leasing of Allotted Lands for Mining Purposes, Act of March 3, 1909
- Mineral Leasing Act of 1920

Other statutes relevant to offshore leases:

- Deepwater Royalty Relief Act of 1995 (DWRRA)
- Energy Policy Act of 2005 (EPAAct)
- Gulf of Mexico Energy Security Act of 2006 (GOMESA)
- Outer Continental Shelf Lands Act of 1953 (OCSLA)

v. Dodd-Frank and EU regulatory actions

Passed in July 2010, the Dodd-Frank Act includes Section 1504 (aka the Cardin-Lugar amendment), that “requires reporting issuers engaged in the commercial development of oil, natural gas, or minerals to disclose in an annual report certain payments made to the United States or a foreign government.”¹⁴ The Securities and Exchange Commission (SEC) will then make a version of the data available online. The SEC has yet to issue a ruling on how Section 1504 will be implemented.

¹³ This section does not attempt to add a legal reading, nor is it an exhaustive list of the legal issues at play in USEITI. Rather, it serves to enumerate specific laws and policies raised by commenters from multiple sectors.

¹⁴ See <http://www.sec.gov/spotlight/dodd-frank/speccorpdisclosure.shtml>

Respondents shared concerns about the implications for USEITI of the SEC’s Section 1504 rulemaking, and noted similar regulatory efforts in the European Union.¹⁵ Perspectives on 1504’s relationship to USEITI vary from those who think the SEC ruling could potentially upend the USEITI process, to those who see Dodd-Frank as complementary to the multi-stakeholder transparency initiative and an opportunity to enhance existing regulation. Given contentious debate among stakeholders over Section 1504, some stakeholders noted the importance of making sure that USEITI does not replicate the “battleground” taking place in the SEC context. Several respondents noted the difficulty of producing the USEITI work plan without knowing how Dodd-Frank will be implemented. Many stakeholders registered concern about the potential for duplicative or conflicting reporting requirements, while others consider 1504 as the framework for expanding its reporting requirements beyond publicly held companies.

vi. USEITI Scope

In general, commenters consider defining USEITI scope to be the MSG’s biggest challenge. Some prefer the initiative start with discussions about a broader scope of lands and industries with specific project level reporting, so the U.S. can serve as the “gold standard” for international EITI efforts.

Others think that “the bigger you make [the scope] the harder it will be to understand and to be enforced.” Some commenters with international experience suggested that USEITI may need to start simple and then, as the process moves forward, the MSG can “go step by step and see what the [additional] problems are that need to [to] be solved.”

“Find the sweet spot between making it a manageable process but still covering a credible mass of what the US does in the extractive industry.”

Should USG present options for USEITI scope?

In order to maximize efficiency of the USEITI process, commenters generally suggest that the U.S. government present a range of scoping options for consideration by the MSG. Straw options, according to stakeholders, could include some that are more narrow or manageable (e.g. oil and gas revenue on federal land), others that involve additional complexity up front, and/or options that allow for increase in scope over time. Some stakeholders cautioned against presenting the MSG with “too preformed [an] idea of what will be covered,” and raised the importance of presenting options as draft suggestions from which the MSG can choose and add as appropriate.

Recommended sources upon which to base draft options included public comments, public listening sessions, and EITI processes abroad. Some comments warned against using processes from other countries as models given the unique nature of U.S. implementation, and instead suggest creating draft options from scratch. Regardless of initial scope, some

¹⁵ In the EU, proposals were made on 25 October 2011 “which would require EU-based companies to disclose their payments to governments for oil, gas, minerals and logging on a country-by-country and per project basis. The proposals are amendments to existing EU legislation governing accounting and transparency standards, and amend both in order that both listed companies and large un-listed companies are subject to their requirements.” See http://www.revenuewatch.org/training/resource_center/eu-legislative-proposals-country-country-reporting

stakeholders advise that the MSG should “ensure a standard that is continually progressive and provides a review mechanism.” Some think it is important to include state and/or tribal revenue up front, while others recommend phasing in tribal and/or non-federal lands later in the process as appropriate. Several commenters note that it is far too complicated to add state and/or tribal lands at any stage. The few respondents who recommend including private lands as part of the MSG’s early scoping conversations rank such revenue less important relative to federal, state and/or tribal payments.

a) Federal revenues

Non-tax revenues

All commenters weighing in on lands to be included in USEITI recommended including revenue collected by DOI’s Office of Natural Resources Revenue (ONRR) that meets an as-yet undefined materiality level. ONRR collects royalties, rents, bonuses, penalties and other payments for extraction on federal land. Reporting templates for federal lands already exist and the U.S. “[has] a decent inventory of federal lands.”

Tax revenues

The separation between extractive revenue and tax collection in the U.S. further distinguishes USEITI from processes in other countries. The U.S. Treasury manages federal income taxes and by law, is prohibited from releasing individual taxpayer information.

Some stakeholders consider the reporting of taxes by publicly traded companies already required in Section 1504 of Dodd-Frank sufficient and perhaps a starting point for other companies. Others note that requiring companies to disclose tax payments in detail is in opposition to existing federal law. Some stakeholders argue that individual company tax payments should be made public through the EITI process. Many stakeholders were unsure about how production-related data could be parsed out from federal taxes given that revenue from activities such as “chemical [production], refining, and marketing impact the federal income tax burden” yet are not specific to extraction. State severance taxes are perceived as significantly less complicated to report than federal corporate or income taxes, and for some, important to include in USEITI. Some stakeholders believe that the MSG should include at least discussion of federal taxes in early USEITI scoping.

Other Revenues:

In addition to the revenues mentioned above, other revenue streams were suggested for inclusion in the MSG’s initial scoping conversations. As an example, the Abandoned Mine Land Reclamation Fee, currently assessed by the Office of Surface Mining (OSM) on every ton of coal produced in the U.S. and used to fund the Abandoned Land Mine Program, could be included in USEITI. In 2011, OSM collected \$256 million in fees for extraction on all lands. While not required by EITI guidelines, the MSG may, according to some, also want to consider including environmental impact reporting, and USEITI may be an opportunity to publish data on the natural resource revenue dollars invested back into communities.

b) Tribal revenues¹⁶

Thirty-four resource-rich tribes are based in the U.S., and each is sovereign. Tribal allottees number 30,000 and many of these tribal rights are fractionated, which means a single right has been “fractionated” due to multiple generations within families passing down the right to all or many descendants. In terms of reporting, federal and tribal data are captured in a similar format for ONRR. If this reporting methodology changes in any way, however, tribes may have a stake or interest in the specific changes made. Furthermore, larger tribes may have an interest in EITI approaches in order to increase transparency for tribal members, tribal corporations, and/or investors.

c) State revenues

By law, States receive federal disbursement of certain revenues collected for mineral extraction on federal lands and waters, and they also collect their own revenues for mineral extraction on State lands. Many states collect proprietary severance taxes on the extraction of natural resources. Each state has its own governance of natural resources and payment structures, however, and royalties and lease terms vary from state to state, which affects the amounts states receive for specific types of payments. In addition to complexity of governance and reporting, states have transboundary challenges (across multiple states) and split rights where federal minerals, state minerals, and private minerals are all on the same surface in different areas. Some consider reconciling state level reporting too time consuming and costly, while others think it essential to consider including states, especially those with the greatest revenue and/or impact, at the start of MSG deliberations.

vii. *Costs of implementation*

Concerns about USEITI cost are twofold: 1) funding needed to adopt new or adjusted reporting procedures, and 2) resources needed to convene and facilitate the MSG.

1. Costs of reporting. Some are more focused on the direct correlation between the level of disaggregation required and the cost of reporting. Commenters thus advise the MSG to minimize the cost of reporting by keeping different reporting mechanisms compatible with each other and focused on the objective of the EITI – transparency of revenues – rather than any number of related but different issues such as general governmental oversight of extractives, environmental protection, and so forth. Should changes be made to the tax regime, additional costs would be incurred both by industry and government.

2. Costs of convening and facilitating the MSG. The process itself could be expensive, and the source of funding for MSG operations is not yet clear to stakeholders. The World Bank Multi-Donor Trust Fund (MDTF) partially funds developing countries’ processes, but the U.S. would not, as a contributor and developed country, qualify for funding. Some commenters stated that if the U.S. government deems this a worthwhile objective, a U.S. agency will find funds to see the process through, and may provide a secure source for consistent funding. Some noted that the three sectors may be able to fund their own participation, if the terms

¹⁶ Please note that this report does not include information from tribes on EITI. DOI has conducted preliminary government-to-government outreach with tribes, and will engage in consultation regarding this analysis.

of reference and process are relatively clear. And others suggested that costs should be a shared responsibility among the three sectors, with each contributing funding and/or in-kind staffing, office space or other resources, in order to preserve the independence of the MSG and insulate it from any changes in the government or other sectors.

Whichever route is taken, the MSG needs to identify funds for the overall process and for the staffing of the USEITI “secretariat” (see below for definition) as part of the fully-costed workplan it must submit with the application for candidacy. Participation could take a considerable amount of time and resources several noted and thus expressed concern about at what level representatives should be assigned from within their organizations. Commenters noted that cost could be mitigated by convening a mix of in-person sessions and videoconferences.

viii. Timeframe

All respondents characterize DOI’s proposed timeline of standing up the MSG by summer 2012 as “highly ambitious.” The timeline is perceived as either ambitious enough to inspire quick decision making across sectors at a time when USEITI has “strong support and momentum from the administration” or unrealistic due to timing and resources needed for MSG structure formation and member selection. Some warned not to overpromise on timeline and outcome at the expense of sufficient outreach and recruitment. As it stands, noted one stakeholder, the current timeline runs the risk of the “U.S. dictating a solution in order to fit into timing.”

In particular, NGOs and tribes will likely need more time for sufficient outreach and internal prioritization, and industry may need more time to educate and recruit smaller companies. The timeline will be further influenced by the process used to select and/or “stand up” the MSG. Others raised concerns that the 2 ½ year timeframe required for EITI compliance may be unachievable should the USEITI scope be too broadly defined.

ix. Education/Outreach

As noted above, respondents consider it essential for DOI to proactively engage subsectors of civil society, industry, and government in order to maximize inclusivity and ensure proper representation. Some comments also noted that each of the sectors should take responsibility to conduct their own education and outreach within their sectors. In particular, companies and NGOs with experience in EITI internationally can and should educate and mentor their colleagues in U.S. industry and civil society who may be less familiar with EITI. Some stakeholders recommended developing a “comprehensive, modern communication strategy” as soon as possible to maximize compliance with EITI rules concerning public engagement. Such communication could serve to provide baseline education on EITI, ensure proper feedback mechanisms, and publicize the principles, makeup, and activities of the MSG.

“Best practice indicates that successful EITI implementation requires a substantial and sustained communication process.”

Suggested guidelines for engagement include prioritizing areas in which production has the most social and environmental impact, engaging a “diverse range of organizations and institutions,” and seeking input from potentially interested states and tribal governments regardless of scope. Domestic and smaller producers may be more skeptical of the process, so industry associations and ONRR were encouraged by commenters to continue correspondence with all lease holders on federal and tribal lands letting them know about USEITI and their potential role in implementation. Specific outreach methods were noted, including posting educational materials (e.g. DOI’s EITI presentation), drawing on existing federal public engagement mechanisms, convening additional public listening sessions in other regions, extending the public comment period, hosting webinars or conference calls, and providing assistance with regional civil society networking.

3. Convening a Multi-Stakeholder Group

a. Principles as articulated by the EITI Rules

As mentioned above, EITI requires that implementation be driven by a multi-stakeholder group “including – but not limited to” -- the three major sectors mentioned thus far in this document. Key requirements for MSG formation and operation include decision making, self-determination, capacity, transparency, and representativeness.¹⁷ The EITI MSG should ensure, according to EITI principles:

- An inclusive decision making process;
- The right to sector self-selection;
- Freedom to operate and liaise with constituency groups;
- Proper capacity of its members to serve on the MSG;
- MSG representatives bound by public Terms of Reference (TOR); and
- Transparent record keeping.

Rules specific to the government’s convening role require representation by senior government officials; transparent invitations to participate; adequate representation; and principled rotation of group members out of the MSG. Some USEITI stakeholders suggested that the U.S. MSG mirror the international board¹⁸ in size, composition, and decision rule, while others believe the USEITI MSG ought to be entirely unique as compared to the international process.

“The more compact and simple the process, the higher the chance of success and the fewer problems along the implementation path.”

b. Size and numbers overall

Commenters offered a broad range of advice on the size of MSG membership. Some felt that for the MSG to be efficient and effective, its membership should be no more than ten representatives. Several commenters expressed concern about too large a group being

¹⁷ See *EITI Rules, 2011 Edition*, p. 16 at <http://eiti.org/document/rules>

¹⁸ For a list of EITI International Board members, alternates, and guidance for constituency self-selection, see <http://eiti.org/about/board>

unwieldy, slow, and cumbersome if not outright ineffective. Others felt that since the U.S. is so complex, one might need twenty-five (25) or more representatives to be inclusive and complete. Most commenters stated that the MSG has to balance inclusiveness with efficiency.

Respondents noted that participation at the MSG level might include a range of roles. The MSG could have principals, alternates, advisors or technical or other liaisons. For some it is important to include alternates who are willing and incentivized to be as invested as full members in the process. In order to maximize participation and retain interest, some suggested it may be useful to institute a mechanism in which principals can rotate in and out of the MSG such that, for example, an alternate could formally replace a primary member and open up the space for a new alternate/entity. Liaisons, or observers, could play a key role in outreach to various constituencies. MSG subcommittees might also provide additional opportunities to increase high-level participation across sectors.

Several comments noted that each sector within the MSG should and would need to conduct ongoing constituent outreach, and that the MSG as a whole would need to do periodic public engagement on key issues (such as public comment periods, public meetings, etc.) as well as tribal consultation. Stakeholders envisioned a key role for industry associations in convening working groups on specific issues so that companies without seats at the MSG have an opportunity to inform, and be informed by, MSG deliberations. States may likewise employ a “2-tier” model, in which representatives to the MSG participate in a robust feedback loop via governors associations, lands commissioners associations, interstate compact commissions and/or the State and Tribal Royalty Audit Committee. U.S.-based civil society groups with broader international and/or national perspectives might also set up mechanisms for engaging regional groups throughout the USEITI process.

Some stakeholders suggested that there should be an opportunity to “opt-in” to USEITI for interested parties who are not represented on the MSG but still wish to participate, such as particular states, tribes or companies that do not meet initial scope or materiality criteria. This could result in the creation of a group of USEITI affiliates, members, supporters or some other category to which all interested parties could subscribe.

c. Balance across sectors

Stakeholders provided a range of advice on the balance of sectors within the MSG, but almost all commenters suggested an equal balance of representatives across sectors to ensure the practice and perception of fairness (i.e., equal numbers of representatives for each of the three sectors). Recommendations on size and balance were informed by commenters’ experience with multi-stakeholder initiatives such as Federal Advisory Committees, working groups convened by associations representing specific industries and/or states, and in some cases, international experience with EITI itself.

A small number of commenters suggested that industry should comprise a larger percentage of the MSG due to: a) the size and diversity of U.S. extractive efforts; and b) the notion that industry will, along with government, be most responsible for operationalizing any changes to current revenue accounting systems. Others stressed the importance of establishing parity across sectors in strength of personality and expertise, as well as numbers.

d. Selection of representatives within sectors

i. Sectors¹⁹

- a) **Government - Federal:** Stakeholders recommended that multiple agencies occupy Federal Government seats using, among other overarching principles for selection, a requirement that the agencies be “representatives of the recipients of all (TBD) significant material payments by the mining, gas and oil industries.” It may be useful at some point, even if not at the beginning, to involve congressional participation on the MSG. Federal representation on the MSG could include:

- Department of the Interior (ONRR, Solicitor’s Office, Land-owning/permitting agencies like BOEM, BLM)
- Department of the Treasury – (Internal Revenue Service (IRS) and Financial Management Services (FMS) could serve as a Technical Assistance provider and/or on the MSG)
- Environmental Protection Agency (EPA) Mining Team
- Office of Management and Budget (OMB)
- State Department

- b) **Government - States:** Depending on USEITI scope and states’ interest, commenters envision representatives from individual governments and/or associations as liaisons or full members of the MSG. Advice on state representation ranged from general to specific criteria, and stakeholders qualified that suggested revenue-based criteria could be further broken down by industry. Potential MSG members could include states that

“It will be a challenge to figure out states’ role and to what extent they should be involved. They are pressed for time and will need to be sold on the importance / necessity of their participation.”

- Collect and receive royalties for extraction;
- Receive the highest total revenue, regardless of land type;
- Include the most extraction on non-private land;
- Report the highest total extractive revenue on federal lands only;
- Experience the greatest environmental and/or social impact; or
- Comprise the most diverse mix of extractive industries

- c) **Industry:** According to respondents, industry can be widely represented, by a combination of trade associations, such as those listed above in the Challenges section, and individual companies. According to some, trade associations need to express the views of all their members, which can make decision making more difficult, or may require trade groups to reflect only the most cautious views of their members.

¹⁹ We use sectors in this report to refer to the three groupings of government, industry and civil society as expressed by EITI.

However, many noted that trade associations have well-established means to engage, organize, and reach back to their members, and can identify those within their memberships willing and able to serve and add value. Some expressed concern about small players, though others noted that industry associations such as the Independent Petroleum Association of America (IPAA) can help reach smaller producers that would likely not get a seat at the MSG table. Some think that even smaller producers should have at least one individual company on the MSG. Suggested criteria for industry representation we heard stated include:

- A mix of companies by size and function;
- Half represent mining, half represent oil and gas;
- For oil and gas, trade association representation + two companies (one with a U.S. base and one with an international base);
- Regional diversity;
- Diversity by size;
- Diversity by domestic and internationally operating;
- Diversity by publicly traded versus privately held.

d) **Civil Society**, as described above, may include a wider variety of representatives than other sectors. Several stakeholders recommended prioritizing recruitment of domestic open government organizations to the MSG, as they have more intimate knowledge than international NGOs about U.S. governance and domestic transparency issues. Others expressed concern that this sector could become a catchall representing anything that is non-governmental or outside of industry. Those concerned about the vague definition of civil society think it important to keep this sector purposeful and perhaps to create a fourth sector as needed. Potential representatives on the MSG may include any or all of the following actors:

- Academics
- Associations of tribal allottees
- NGO coalition representatives
- Individual NGOs: Industry-focused (e.g. oil/gas or mining) and Functional (e.g. open government or environmental)
- Investors
- Media
- Non-governmental Individuals (NGIs): individual nationally recognized experts on transparency
- Regional NGOs
- Representatives of federal, state or tribal governments or companies who choose not to participate in reporting but have an interest in EITI
- Unions

Other groups that may serve in an observer status could include private landowners, who may have an interest even if they are not included in USEITI scope.

ii. Other Key qualifications

Some highlighted the importance of international EITI experience, while others feel strongly that the MSG should include new and more domestic perspectives. Some also noted the importance of explicitly seeking representatives who are committed to the principles of EITI, particularly the notion of working collaboratively with other sectors. Representatives should have sufficient technical knowledge to follow and engage substantively in the details of EITI implementation, and also possess the authority to speak on behalf of their organization and sector. Thus, representatives might need to be a senior official, but not necessarily the head of an organization.

Criteria for technical advisors, if needed, will also be important but no specific suggestions were given to date. Finally, some commenters cited the importance of utilizing a “very strong facilitator that doesn’t allow the groups to go beyond the scope of discussion and who manages process well.”

e. Administrative or other processes for “standing up” MSG

Most commenters strongly advised allowing civil society, industry, and government to self-select representation on the USEITI MSG in order to preserve process legitimacy and the spirit of inclusivity. A smaller number of commenters stated that the government should be empowered to select the MSG with input from the sectors, given its role as convener and potential role in developing the “regulation, administrative directive, or law of congress that puts the seal on mandating all companies to disclose.” Others are concerned that convening the MSG through a process such as FACA would violate the spirit of EITI self-determination not to mention be cumbersome and overly bureaucratic.

“It is important to the credibility of the whole process that [sectors] can self-select.”

i. Self-selection

Although industry and state associations may be equipped to orchestrate self-selection of representatives to the MSG, it appears that “some facilitation or coordination assistance would be needed for NGOs” in order to coordinate self-selection with regional NGOs. Should tribes be involved in USEITI, self-organization “would be a fundamental prerequisite to participation.” A larger number of available seats was viewed as helpful by some sectors to expedite the self-selection process, while for others, narrowing the number of available seats would help streamline selection and mitigate the risk of alienating excluded constituents. Most stakeholders identified the need for specific terms of reference that outline the role and qualifications of MSG members.

ii. Federal Advisory Committee Act (FACA)

According to some stakeholders, an MSG formed via FACA could be an appropriate -- though not optimal -- structure for USEITI. FACAs are “known territory” and require transparent proceedings, a clear process for selection of members, and have an established history in case law. However, respondents also noted that FACA presents constraints such as multiple levels of approval, including OMB; difficulty in changing representatives; current policies around exclusion of lobbyists that might prevent capable representatives from serving; and the fact that it is advisory and not decisional. It is also not yet clear whether a FACA will be sufficient for implementing all of the responsibilities required of the MSG. According to one stakeholder, “FACA presupposes that the federal government is the decision maker, obtaining advice from outside parties. The federal government isn’t the decision maker here, though, but only one of three sectors.”

For some, FACAs are most effective when scope is totally clear. The MSG will not begin its deliberations with full clarity on scope, however, since the group will likely be presented with straw scoping options from which to choose and/or augment. Overall, as long as sectors can self-nominate and potentially self-select MSG representation, several respondents believe that FACA could be the most convenient and potentially timely option. Some others would prefer a different approach but deferred somewhat to DOI to identify other legally defensible, practical alternatives. Please see the Options section below for additional convening models and legal considerations.

iii. USEITI Secretariat?

Related to the above comments about EITI MSG formation and process cost were questions about who would carry out the administrative functions of USEITI. Implementing countries have formed “secretariats,” comprised of staff whose tasks include the day-to-day work of supporting the MSG in between meetings. Some commenters noted the tension between allowing the government to extend its convening role to staffing the secretariat – as is done in some other countries – and maintaining the spirit of EITI inclusivity. Though housing and staffing the secretariat at DOI could be an option, some suggest it prudent to include multi-sector leadership at the USEITI secretariat if possible, in order to preserve the independence of the secretariat from any one sector and to provide greater shared ownership and long-term viability in the face of potential changes in government.

4. Options for Action

Based on the public listening sessions, written public comment, detailed input from over sixty interviewees, dialogue with the Department of the Interior EITI team, and an interagency working group, CBI puts forward the following recommendations and, in some cases, options for further public and stakeholder consideration. Our recommendations include the following components:

- Who should establish the initial scope and direction of EITI implementation in the US?
- Should the MSG be initially established as in interim or full MSG?

- What decision rule should the MSG use to reach its decisions?
- What is an appropriate size for the MSG and how should sufficient balance be established across sectors?
- What might be the role of tribes and tribal allottees?
- How might states be involved?
- Criteria for representation individually and across the MSG
- Selection of Representatives
- Administrative and legal options for establishing the MSG

a. Who should establish the initial scope and direction of EITI implementation in the US?

In order for the USEITI process to be effective, the MSG should be established early in the process. The MSG is the best body to determine the initial and overall scope of the effort, to affirm, and if needed, add to its membership, to conduct the important cross-sectoral work around implementation of EITI principles within the large and complex U.S. landscape, and to reach out to and communicate with constituents. There is a limited role someone like a facilitator can play in serving as a conduit of ideas and information for such a complex system as revenues from extractives among and between stakeholders. In addition, the federal government, while a key player, is part of only one of three sectors and in a balanced, inclusive process should engage stakeholders and decide with, not for them. We believe that a MSG can best undertake the following:

- Consider the range of choices for an initial and longer-term scope for the MSG (i.e., there are numerous questions regarding which extractives, which federal revenues, roles of tribes and states, level of materiality, and review and documentation of the existing reporting system);
- Affirm its membership, consider additional members, as needed, to further represent key stakeholder interests, and how best to communicate with and reach out to constituents and the general public.
- Develop a detailed work plan to be submitted to the EITI Secretariat.

b. Should the MSG be initially established as in interim or full MSG?

In our interviews and discussions, some have suggested it may make sense to create an interim or initial MSG. Most, including the EITI International Secretariat, acknowledge that the U.S. extractives industry, U.S. federalism, tribal sovereignty, and multitude of revenue streams makes the U.S. environment one of the more if not most complex operating environments in which to implement EITI. An interim MSG might help engage stakeholders earlier and help consider or decide upon many of the questions and options raised in this assessment. For instance, an interim MSG might help determine how best the selection process for sectoral representatives should be handled, the direction of the considerations report, and the right balance and number of representatives on an eventual full MSG. Such an interim MSG might be stood up more quickly, provide time for all to gather more information on constituents' interests, and help provide direction sooner rather than have the federal government continue

to lead the early process. However, others have raised concern about the time this “interim” approach would take, that the effort to establish an interim MSG would be no different than the effort to create a formal one, and that the energy, momentum and willingness from all sectors to engage in EITI should be tapped now, not later.

We do not conclude which approach is better: stakeholders need to balance the deliberateness and transparency of an interim MSG might provide with the time and effort it would take to use such a mechanism. This question would benefit greatly from additional public and stakeholder input. To focus further input and discussion, we have developed a table of advantages and disadvantages of various options and offer the following four criteria we developed based on numerous comments we received on this topic:

- the input of sectors and their preferences;
- the speed in which work can be done (i.e., move as expeditiously as possible);
- whatever is established resides within a legally defensible structure; and
- whatever is created is adaptable and whose membership, size, and scope can evolve over time.

c. What decision rule should the MSG use to reach its decisions?

A decision rule is the mechanism by which a group reaches a decision or conclusion. Decision rules range from a simply majority vote of members to a supermajority (2/3rds) or unanimity. In reviewing comments, the EITI procedures, and the operations of the overall internationally governing board of EITI, we conclude that the MSG, in whatever form it takes, should operate by a decision rule of consensus. We note that the international body has operated with such a decision rule for several years. We also recommend that ultimately, however, it is the MSG’s prerogative to determine its decision rule and other operating procedures.

By consensus we mean, on decisions reached by the MSG, all representatives:

- will abide by or “can live with” (not necessarily be enthusiastic about or strongly in favor) the outcome; or,
- can abstain from the decision in order to allow the MSG work to move forward and such abstention would be recorded in written documentation.

We recognize that this can be a high hurdle for any group, however congenial, to achieve. On the one hand, given the voluntary nature of the EITI process and the importance of broad support, or at least acceptance, across sectors, it is important to have as inclusive a decision rule as possible.

We do believe that there may be issues that require a difficult decision where consensus cannot be reached. In this case, we recommend a “fall back” rule that would be implemented only in rare circumstances. This secondary decision rule would allow the MSG to reach a decision as long as a majority of each of the three sectors’ representatives can accept or live with the decision at hand. With this rule, no two sectors can overrule the strong opposition of a third sector, and at the same time, no one or two individuals can hold up the MSG’s actions on important and difficult decisions. For example, if a group of nine has three sectors, that is, three representatives from each of three sectors, as long as 2 of 3 representatives of each sector

voted favorably, an affirmative decision would be reached. However, if one of the three sectors had 2 members voting no and 1 voting yes, the overall vote would not pass since, in effect, that one sector would have vetoed the decision.

We want to note that early consideration of the decision rule is important because it can affect people's views of the number and balance of a group. That is, if the decision rule is simple majority, for example, stakeholders are likely to have different views on the composition of the MSG than if the decision rule is consensus or near consensus.

Regarding the federal government and decision making, we note that consensus decision making allows the federal government to participate actively and to retain its fiduciary and legal authorities while including and taking significantly and substantially into account the advice, recommendations, and decisions of other sectors. In short, if the federal government sector consents to a decision under a consensus decision rule, it has de facto determined it supports and can abide by the decision at hand under its authorities and mandate. This precedent has already been set by such acts as the Negotiated Rulemaking Act that allows and even commits, to some degree, federal agencies to implement the decisions of advisory committees as long as the federal agency is part of the consent or consensus decision making. It should be noted that where multiple federal agencies may be involved in the MSG, the federal government would have to determine how to resolve differences among its various parts through some kind of interagency mechanism.

We also note that "decisions" have legal and practical implications. Can a decision of the MSG be truly and fully binding in any way on federal government or industry actions? What does it mean for a representative of a complex constituency like "smaller gas and oil operators" or "civil society" to make a decision on behalf of others? If a "decision" of the MSG is merely advisory to all sectors, including the federal government, how does one ensure the decisions of the MSG are meaningful, implementable, and effective?

These are complex questions, of which the MSG will need to discuss in detail. We do consider the role of "decisions" further below when outlining federal administrative frameworks for establishing the MSG, at least when it comes to the federal government.

d. What is an appropriate size for the MSG and how should sufficient balance be established across sectors?

As noted in our findings, comments suggested the MSG comprise anywhere between 10-25 full members to balance efficiency with representativeness. Given our scan of the range of issues and players, whether or not the MSG begins as an interim or full MSG, we recommend as a starting point a MSG of fifteen (15) members. We also recommend that there be up to five (5) alternates per sector. Why five members per sector? We believe that this is the minimum number necessary to adequately, though not perfectly, represent the range of interests for beginning (not necessarily completing) the work of EITI implementation in the U.S. Furthermore, this number allows the MSG to increase its size if it wishes; without burdening it with such a large size that an increase in membership would feel onerous and inefficient. Because of the "fall back" sectoral simple majority rule we propose above, in any case, each

sector should need to be represented by an odd number to avoid tie or deadlocked votes within sectors.

Five members per sector would allow the following:

- Within government, a range of agencies with a direct stake in extractives revenues and distribution.
- Within industry, an opportunity for both mining and gas and oil to be represented, along with trade associations and a few individual companies;
- Within civil society, at least as a starting point, several organizations active in and knowledgeable about EITI issues in the U.S. and internationally.

It may also be useful to have liaisons to the MSG. For instance, as discussed further below, the states might be represented, at least initially, via a liaison to the MSG. Liaisons would be able to participate actively in all discussion and dialogue of the MSG but would not have voting/decision making authority. It might also be useful to have technical advisors to the group from any of the sectors, as agreed to by the MSG.

Five members per sector may not, ultimately, be sufficient to represent any one sector. For instance, industry may determine that the diversity in publicly-traded and privately-held, small and large, and subsectors within a sector (say gas, oil, coal and other minerals) may require more representatives. Government may determine that, if the intent of the states and/or tribes is to participate in some way, five may also be an insufficient number. Civil society, with its broad definition, may determine that additional groups should be represented to more accurately reflect civil society views writ large.

Despite these possible limitations, we believe that five members each provides a balanced and effective starting point, noting once again that the ultimate composition of the MSG should be determined by the MSG and could be expanded with time as needed.

e. What might be the role of Tribes and Tribal Allottees?

Tribal consultation regarding EITI implementation in the U.S. has only begun. Thus, this assessment does not reflect adequately nor sufficiently the views of tribes or individual tribal allottees regarding their potential interests in this process. We do recommend formal and informal tribal consultation in conjunction with any public comment period on this assessment to: 1) provide a written product for which the tribes can respond and comment; 2) obtain feedback and advice on whether and how tribes would want to be involved in EITI; and 3) fulfill the requirements and obligations of tribal consultation incumbent upon federal agencies.

As the findings note, tribes may have a range of interests in EITI, from how their revenues are reported through the current Office of Natural Resource Revenues (ONRR), to the individual allottees who are tribal members. The General Allotment Act of 1887 (aka The Dawes Act) authorized the President to allot portions of reservation land to individual Native Americans. The recipients of these allotments became known as allottees. ONRR uses the term "allotted leases" because the status of the land has not changed and royalties are distributed to the heirs of these original allottees. For a legal definition, according to FOGRMA, the term "Indian allottee" means "any Indian for whom land or an interest in land is held in trust by the United States or who holds title subject to Federal restriction against alienation."

Though we cannot state with confidence, it may be worth considering allottee and tribal government interests separately. In some sense, tribal allottees and the few existing organizations that represent them might be considered part of civil society. One option, thus, is for civil society to consider among its representatives, a representative of tribal allottees. Another option is for DOI or the MSG, at least initially, to “carve out” any issues related to allottees. Only later, when options are clearer for how the MSG might proceed on matters of reporting and the like, would allottees be engaged through some kind of outreach and engagement process. This would allow the broader issues related to EITI to proceed while protecting and separating the interests and needs of tribal allottees.

Tribal governments, however, are sovereign, unique, and distinct within the customs and laws of the United States. While DOI has the authority to collect revenues, royalties and rents on behalf of tribes, tribes may also enter into their own arrangements with companies, have their own government structures, reporting requirements, and needs, and might wish to increase transparency or not for their own revenues. Furthermore, the collection and payment of various revenues by DOI has a long and difficult history, most notably the long-pending Cobell legal case that is only now in the process of implementation of a settlement. For all these, reasons, the federal government through DOI cannot nor should not speak on their behalf.

Because of Tribes’ unique status as nations within the nation, there may be several possibilities for how Tribes participate in EITI. While recognizing this list is incomplete because full tribal engagement is still needed, some possibilities include, but are not limited to the following:

- DOI or MSG, at least initially, “carve out” any issues related to tribes. Only later, when options are clearer for how the MSG might proceed on matters of reporting and the like, would tribes be engaged through formal consultation.
- The MSG, once formed, consults itself directly with tribes to determine how to proceed early in its work plan.
- The MSG establishes a more formal, on-going consultation and engagement process with tribes and allottees, separate from broader public and constituency engagement. At key points in the EITI process (i.e., draft scoping report, draft work plan, etc.), it actively seeks out tribal advice and opinion.
- Because resource tribes may be meaningfully affected by decisions that a MSG might make, including even early scoping and work planning decisions, a tribal representative(s) could be sought.
 - This tribal representative could be a representative of the government sector, or potentially the civil society sector, or serve as a liaison. This representation is complex because no one tribal representative could bind any tribe other than their own (and only if that tribal representative is granted such authority by that tribal council). However, various existing DOI advisory committees do have tribal representation, however imperfect. Though again not ideal, one could imagine a single representative, or north and south resource tribes, or east and west. A liaison might participate actively but should tribes recommend “standing back” from EITI at this time to some extent, the liaison could serve as an important communications channel to tribes within being a decision maker on the EITI or on behalf of tribes.
- It might be necessary, though complex, to establish a separate tribal and allottee committee related to EITI to address the unique and specific needs of tribes and allottees.

- Lastly, it might be possible to establish a pilot approach in Indian Country to seek to initiate EITI with an interested tribe or tribes (Australia has taken that approach for some of its states) and learn from that experience to determine if the effort has greater applicability across all resource tribes).

f. How might states be involved?

It is too early to determine the range of state interests and revenues to be included in USEITI. EITI standards do not require sub-federal government level reporting such as from states, provinces or other sub units of a country. However, several interviewees raised the issue of how and if states should be involved, especially given our somewhat unique federal system of government. As revenue collecting entities, many states receive payments from extraction on state land through severance and/or income taxes. Several commenters, including some representatives from the states themselves, consider USEITI an opportunity to improve data control and increase transparency at the state level. Other stakeholders suggested that enhanced federal revenue reporting could be useful to states for comparison purposes, even if state income falls outside of USEITI scope.

On the other hand, state sovereignty and complexity pose challenges to ensuring adequate representation on the MSG and, ultimately, constructing an actionable work plan should state revenue be included. Each state has its own regulations and proprietary reporting systems. Inclusion of state income would likely require major changes to existing reporting practices and, consequently, necessitate additional resources that state governments cannot provide in the current economic climate.

As suggested in the above findings, criteria for state representation could range from states with the highest total revenue to those with the largest impact or the most diverse industries. Given the potential complexity of including state revenue, and the limited number of seats proposed in the above guidelines, we recommend two possible options for state involvement in the MSG.

- States choose a liaison to the MSG who serves as an observer and plays a critical role in outreach to state-level constituents; or,
- States choose one to two full representatives to sit on the MSG who reports to a second tier of stakeholders comprising states with specific interests. Several commenters suggested that governors associations, lands commissioners associations, and interstate compact commissions could provide the structures (e.g. working groups) and organization necessary to maintain an adequate feedback loop between the states and the MSG. To be sure, selecting one representative and one alternate would be a difficult task; however, these same associations could likely produce a shortlist of nominees for the MSG.

g. Criteria for representation individually and across the MSG

From our interviews and the public comment period, there are several criteria that we have identified that should guide selection of representatives. There are two general kind of criteria: 1) those individual criteria for which all representatives on the MSG should embody or meet; 2)

those balancing criteria for which the representation on the MSG overall should seek to achieve, though not all individual members would possess or meet each.

1. For individual criteria, we recommend that representatives meet the following criteria:

- Access to a constituency and a process for reaching decisions within that constituency, and the authority to make decisions as a member of the MSG on behalf of that constituency;
- Have at least some understanding and working knowledge of what is involved in revenues, reporting requirements, tax collection, and/or royalty distributions (i.e. some form of technical proficiency in the matter);
- Committed to the EITI process and to operating in a multi-stakeholder setting;
- Open to collaboration, new ideas, and joint exploration; and,
- Represent U.S.-Based constituents, organizations or companies.

On the last criterion, we note that there are many international companies and civil society organizations that have a significant stake in the implementation of EITI in the U.S. However, we find that the EITI process needs to be tailored to the unique and particular circumstances of the U.S. and that, at the least, U.S. based companies and organizations should be given preference over others.

2. For balancing criteria, we recommend that the composition of the MSG overall ought to include one or more representatives who meet or can represent one or more of the following criteria:

- EITI International experience;
- Private and publicly held companies;
- Domestic-only operating companies;
- Trade associations and companies;
- Small and large companies;
- National and regional or local NGOs;
- Geographic diversity;
- Technical expertise; and,
- Policy expertise.

Though we believe that these criteria are useful guidance for convening a MSG, we also note that both EITI guidance and more general best practice in collaboration suggests that self-selection among sectors is an important principle.

h. Selection of Representatives

In general, EITI guidance and best practice in collaboration calls for the sectors to “stand themselves” up in terms of representation on the MSG. While that principle is highly desirable, it can be quite difficult to implement. How does U.S. civil society as a whole select five representatives on a MSG? How does industry, with thousands of actors, and the federal government, states, and tribes decide the same? Furthermore, selection or nomination of representatives is at least somewhat dependent on the administrative/legal process used to create the MSG.

Despite this complexity, we find that the organizations focused particularly on the issue of transparency of extractive revenue payments to government comprise a somewhat defined universe of players. While not perfect, we find that there are a limited number of convening organizations with sufficient interest and knowledge of the issues and constituencies to serve as important intermediaries in creating the initial membership of the MSG.

For industry, there are three key trade associations who can assist with industry selection: these include the National Mining Association, the Independent Petroleum Association of America, and the American Petroleum Institute. Each of these has a structured organization, a large number of members, and a means to work with its members through outreach, committees, and other tools to help identify representatives.

For civil society, there are international non-governmental organizations based in the United States with extensive experience organizing civil society sectors in other countries. And there are five to ten non-governmental organizations particularly focused on open government and transparency in the United States who can in turn reach out to others in U.S. civil society. Some of these groups do not necessarily have the resources to conduct extensive outreach on their own and may need assistance in convening a larger group of civil society groups to determine best representation. Furthermore, because this sector is so broadly defined, the challenge will be to also consider academics, faith-based groups, unions, and certain investor groups who may have a substantive interest in EITI matters.

For the federal executive branch, there are numerous interagency mechanisms to communicate across agencies and determine representation. The federal government has already established an interagency working group regarding USEITI that could be utilized for this purpose. For the legislative branch, the issue is slightly more complex. However, it is likely in the interest of the MSG to find a way, once established, to create appropriate and effective communication channels with Congress via its related committees and/or key Congressional or committee staff.

For states and tribes, we do find that these different governmental actors pose potentially greater challenges in convening. We have provided consideration of these in two separate sections above.

Given these findings, we recommend the following process for convening the MSG, assuming the federal government has at least an initial role in being the “convener” of the group, as is typical in implementation of EITI across many countries. Please note, depending on the type of administrative process used to establish at least the initial MSG, the following steps might have to be modified.

1. The US. Government, either through the White House or the Department of the Interior (DOI) as the Executive Agency granted the authority under the Office of President should implement a convening process.
2. This convening process itself should be vetted with stakeholders and the public through a public comment and engagement process (i.e., this assessment process, including a public review of the assessment report in draft).
3. Upon completion of the assessment report after public comment, the USG should initiate as quickly as possible a call for nominations under the appropriate administrative procedures

based on the assessment (including various criteria noted) and comments received on the assessment (*see section below on options for establishing the MSG*).

4. The call for nominations should adhere at least to the following:
 - a. Sectors, to the greatest extent possible, should nominate, narrow, and short of formal selection, select their own nominees based on the criteria noted earlier in this report.
 - b. Nominees should include principals and an equal number of alternates. Principals and alternates would not have to be from the same company or organization.
 - c. With the exception of basic ethics reviews for federally-associated bodies, USG should commit to accept and ratify the nominations of each sector while sectors should recognize under federal law that the formal authority would rest legally with the federal government.
 - d. Sectors, should to the extent possible, manage their own nominations within the sector and seek to put forward collectively within that sector the number of representatives suggested by this assessment, after public comment.
 - e. Nominations should include clear support from as large a constituency as is possible within that sector. Such support might be shown through formal actions of trade associations, letters of support from multiple organizations, or other means. Each sector should make public the criteria for its selection and the process it used for selection to ensure both the transparency and legitimacy of the sectoral representative selection process. However, please note that each sector's process may vary greatly and it is the purview of each sector itself to select its representatives to the greatest extent possible.
 - f. For kinds of organizations that may not easily "fit" into a sector, each sector should determine how it wishes to address such organizations such as investor groups, academics, or others.
 - g. The USG should conduct the nomination process with openness, transparency, outreach, and sufficient time to allow each sector sufficient time to conduct its own nomination process.
 - h. The USG should provide independent facilitation or coordination assistance to those sectors that request it to aid in this process.
 - i. Should the USG receive more nominations for representation from a sector than there are "seats," the USG should work with that sector's nominees, directly or through a facilitator or similar role, to help the sector select among its nominations, to the greatest extent possible
 - j. Should this effort not produce the requisite number of representatives, the USG, as a last resort, would decide among the nominees. Should such an action be necessary, the USG should explain clearly its reasoning and use the criteria noted in this assessment as a basis for their decision.
 - k. The MSG, once created, should be able to add to its membership and conduct its own further convening process, as it determines, within, of course, appropriate and legal means.
5. The MSG, once established, should consider providing roles for technical assistance, liaisons, as well as develop a public outreach and tribal consultation strategy/plan.

i. Administrative and legal options for establishing the MSG

Through our assessment interviews, public comments, and extensive discussions with both DOI and other agencies, we have identified the following administrative and legal options for creating the

MSG, at least initially. In explicating these options, we note that ultimately the MSG may decide to reconfigure itself under a different structure or framework, at its discretion. In a sense, the federal government has a unique role among stakeholders to help convene the MSG, but once convened, that unique role should diminish as the MSG itself takes up key decisions about its process and actions, and the government becomes one of three coequal sectors represented on the MSG.

The options we have identified include:

- A non-federal entity or body;
- A federal operating committee or other kind of Congressionally-created entity;
- A federal advisory committee, convened under the Federal Advisory Committee Act (FACA), convened by either DOI or the Executive Office of the President, creating either a new FACA Committee or utilizing an existing federal advisory committee, the Royalty Policy Committee (RPC), or the creation of a subcommittee within the RPC.

Whatever option is chosen, the MSG or interim MSG should seek to meet the relevant requirements under EITI candidacy and compliance. These include, but are not limited to:

- The MSG oversees the implementation of EITI;
- The MSG undertakes such work as developing a fully-costed work plan and time table;
- The MSG includes active and engaged government, civil society and industry participation;
- The MSG defines materiality and reporting templates;
- The MSG retains and ensures satisfactory performance of a reconciler; and,
- The MSG must ensure that the reporting is comprehensible and publicly accessible.

We describe these options below and also seek to describe some advantages and disadvantages of each. At this time, we do not recommend one approach or another. Rather, stakeholder and public input on these approaches is very important to help determine how best to proceed, in part because there are pros and cons to each approach and in part because the principle of joint decision making, at least in the informal sense, is an important component of the EITI process. Some criteria for determining the best approach might include:

- Efficiency and timeliness in which the body can be created;
- Legal precedent and protection for the form of the body established;
- Adherence to EITI requirements (see EITI MSG-related requirements above).

The identified options are more fully described below:

- *Non-Federal Entity*: The MSG might be created through non-government means. For instance, the two non-governmental sectors (industry and civil society) could come together to create a committee or group separate from the federal government. The two sectors could then seek participation by the federal government in that entity. This entity, once created, could affirm or add members, prepare a scoping document, complete a work plan, and initiate discussions regarding how to satisfying reporting, third-party reconciler, and other requirements.

In this context, the federal government itself could use an appropriate mechanism, such as a contract, grant, or cooperative agreement, to support a separate, third-party entity in convening

and/or operating the MSG. The entity could receive funding from the federal government, as long as the federal government does not exercise management and control over it. In order for the federal government not to have management or control, such key decisions as membership (at least of non-federal participants) would have to be made, for instance, by the third-party entity or some initial steering committee of the new entity or the sectors themselves, to the extent possible. Roughly similar federally-funded, non-federally controlled bodies have been created, such as the National Wind Energy Coordinating Committee (NWCC), a structured, long-standing entity with multiple tiers of multi-stakeholder participation to address the broad topics of wind energy development. It may also be possible, in narrow circumstances, for the federal government itself to establish the MSG as a non-federal entity, particularly to the extent that it does not exercise management or control over the MSG.

- *Federal Operating Committee (or other legislatively created entity)*: Congress could enact a statute to create the MSG and provide it with any necessary authority, funding, structure, membership, or organization. An operating committee, for example, is a form of operating and decision-making body that has been created in the past by Congress to perform primarily operational as opposed to advisory functions. Operational functions are those specifically authorized by statute or Presidential directive, such as making or implementing Government decisions or policy. A committee is designated operational so long as the operational functions it performs constitute the primary mission of the committee. It may perform advisory functions as long as they are subordinate to the operational functions.
- *Federal Advisory Committee*: A federal advisory committee established under the Federal Advisory Committee Act (FACA) could be used to conduct MSG functions, at least initially, as part of its advice to the federal government. Either a new or existing FACA committee might be used, provided it complies with FACA's requirements, including that its activities must be conducted in public and public records must be maintained. Because a FACA committee only provides advice to the federal government and the federal government selects its members, it may not necessarily meet the EITI test of a body *independent* of the federal government *overseeing* EITI implementation. However, a FACA-created committee would have the benefit of being created under a frequently used, familiar procedure and would allow the federal government to play an active organizing role in establishing the MSG. The MSG in practice could be highly collaborative and in the spirit of EITI's requirements, depending on the stance and approach of the federal government.

It should also be noted that there is already a Royalty Policy Committee established that provides advice to the Secretary of the Interior through DOI's Office of Natural Resource Revenue (ONRR). This committee could, in two possible ways, serve as the means to stand up the MSG, at least initially. The RPC itself could serve initially as the MSG. Its FACA charter has just been renewed and is inclusive enough in scope to include EITI activities. If necessary, DOI could utilize this assessment and the public comments received on it to modify the membership of the RPC to align more closely with EITI needs. Alternatively, the RPC is allowed under FACA to create a subcommittee that does not have to include only appointed members of the RPC. This subcommittee could be convened according to the results of this assessment and public comment. The limitation is that the subcommittee cannot make decisions for or on behalf of the RPC. Rather, the subcommittee would have to make recommendations or suggestions to the RPC, and in turn, the RPC would reach a decision on its collective advice to the Secretary of the Interior through ONRR.

The following chart seeks to summarize these options and describe some advantages and disadvantages of each. Please note that the advantages and disadvantages may not be a complete list and further public comment is highly desirable.

Advantages and Disadvantages of Various Means to Create the Multi-Stakeholder Group

Form	Convening Body	Legal Authority	Advantages	Disadvantages
Non-Federal Entity	Non-governmental sectors or “third party”; possibly federal government	Could be informal, chartered as a 501(c)3 or other means	<ul style="list-style-type: none"> • Precedents exist within larger society (formal and informal associations) • Range of legal options for creating from informal to formal • Independent of any one sector • Allows for more decision making • Meets the “independent oversight” requirements of EITI • Convening procedures can vary • Could still receive federal funding 	<ul style="list-style-type: none"> • Process may be more ad hoc and less well established than other means • Convening the group would require greater self-organizing not only within but across sectors • Need to ensure to avoid any FACA triggers of federal-government management or control if advice is to be given to federal government • May take longer to convene/organize • Might still require a FACA committee for government to receive advice on particular matters
Operational or other kind of Committee, Commission, or entity	Congress creates; DOI or other agency supports	Public Law	<ul style="list-style-type: none"> • Sanctioned by legislative branch • Could provide a range of clear authority and process • Precedent exists already within DOI (operating committees) and elsewhere in the federal government (various commissions and authorities) • Convening procedures well established in and by law • Allows for shared decision making 	<ul style="list-style-type: none"> • Typically takes some time to establish • Requires Congressional action, which might not be forthcoming or take some time • May have restrictions on membership (similar to FACA requirements in some cases)
Federal Advisory Committee (new)	DOI or White House	Federal Advisory Committee Act (FACA)	<ul style="list-style-type: none"> • Well-known and used procedures • Convening procedures well established • Span of control exists within Government for execution/implementation • Would provide means for action on some, 	<ul style="list-style-type: none"> • Advisory only to government rather than sharing decision making as suggested by EITI • Government selects, rather than sectors self-selecting, at least formally • Typically takes some time to establish

			but not necessarily all, of EITI steps for candidacy and compliance	<ul style="list-style-type: none"> • Has a time-limited charter (typically 2 years, though can be renewed) • May have restrictions on membership (i.e. ethics review, lobbyist participation limits) • Would provide means for action on some, but not necessarily all, of EITI steps for candidacy and compliance
Federal Advisory Committee – (existing -- full existing Royalty Policy Committee or subcommittee of the RPC)	DOI ONRR's Royalty Policy Committee	Federal Advisory Committee Act (FACA)	<ul style="list-style-type: none"> • Existing structure accelerates timeline • Well-known and familiar procedures • Convening procedures well established • If subcommittee, can create membership as suggested in assessment and public comment • Span of control exists within DOI for execution/implementation • Would provide means for action on some, but not necessarily all, of EITI steps for candidacy and compliance 	<ul style="list-style-type: none"> • Advisory only to DOI rather than sharing decision making as suggested by EITI • If subcommittee, advises only RPC which advises only DOI • Current RPC not balanced across sectors • Existing body not designated specifically for this activity • Is not new and “fresh” in establishing a new initiative • Would provide means for action on some, but not necessarily all, of EITI steps for candidacy and compliance

APPENDIX A: Interviewee List

Please note that the individuals we spoke with had a range of authority on which to express the formal and complete view of their organizations as whole. Thus, views, while not attributed, should furthermore not be construed as the formal comment, view, or position of any entity. Upon request, we are not including the individual names of federal government interviewees because while they may have had expertise on the subject, some might not have had the authority to speak on behalf of their organization as a whole.

CIVIL SOCIETY		
Calvert Asset Management Company	Paul	Bugala
Global Witness	Corinna	Gilfillan
Oklahoma Indian Land/Mineral Owners of Associated Nations	Marcella	Giles
Oxfam America	Jeffrey	Buchanan
Project on Government Oversight (POGO)	Danielle	Brian
Publish What You Pay	Isabel	Munilla
Revenue Watch Institute	Karin	Lissakers
Revenue Watch Institute	Rebecca	Morse
Revenue Watch Institute	Erica	Westenberg
Revenue Watch Institute / EITI International Board	Anthony	Richter
Tax Justice Network USA	Nicole	Tichon
Taxpayers for Common Sense	Autumn	Hanna
U.S. PIRG	Dan	Smith
University of Utah	John	Heilbrunn
University of Nevada, Reno	Glenn	Miller
University of Houston	Jacqueline	Weaver
Colorado School of Mines	David	Munoz
INDUSTRY		
American Petroleum Institute (API)	Walt	Retzsch
American Petroleum Institute (API)	Khary	Cauthen
American Petroleum Institute (API)	Justin	Spickard
American Petroleum Institute (API)	Surya	Gunasekara
American Petroleum Institute (API)	Emily	Kennedy
ArcelorMittal	Mark	Burtschi
Arch Coal	Rachel	Rogier
BP	Elodie	Grant Goodey
BP	Brian	Miller
Chevron	Manpreet	Anand
Cleary Gottlieb Steen and Hamilton (representing Alpha)	Michael	Komenda
Council of Petroleum Accountants Societies (COPAS)	Bob	Wilkinson
ExxonMobil	Guillermo	Garcia

Freeport	Jim	Miller
Holland and Hart (representing Barrick)	Steven	Barringer
IPAA (Independent Petroleum Association)	Dan	Naatz
National Mining Association (NMA)	Veronika	Kohler
National Mining Association (NMA)	Kate	Sweeney
National Ocean Industries Association (NOIA)	Randall	Luthi
Newmont	Mary Beth	Donnelly
Peabody	Ed	Sullivan
Peabody	Amanda	Boyce
Peabody	Ursula	Wojciechowski
Rio Tinto	Judy	Brown
Walter Energy	Amanda	Lawson

GOVERNMENT

FEDERAL

Department of Agriculture (USDA)

Department of the Interior

Office of Natural Resources Revenue (ONRR)

Office of Policy, Management and Budget (PMB)

Bureau of Ocean Energy Management (BOEM)

Bureau of Safety and Environmental Enforcement
(BSEE)

Bureau of Indian Affairs (BIA)

Bureau of Land Management (BLM)

Office of Surface Mining Reclamation and Enforcement (OSMRE)

Department of Energy (DOE) - Indian Energy Office

Department of State

Department of the Treasury - Financial Management

Department of the Treasury - Office of Tax Policy

Energy Information Administration (EIA)

Office of Management and Budget (OMB)

Office of Science and Technology Policy (OSTP)

U.S. Helsinki Commission

STATE

California State Lands Commission

Shahed Meshkati

Interstate Mining Compact Commission

Greg Conrad

New Mexico State Land Office

Kurt McFall

New Mexico Oil and Gas

Valdean Severson

State and Tribal Royalty Audit Committee (STRAC)

Christian Okoye

Utah Division of Oil, Gas, and Mining

John Baza

OTHERS

Goldwyn Strategies

David Goldwyn

World Bank

Anwar Ravat

APPENDIX B: Interview Protocol

Background and Substance

1. How familiar are you with EITI as a process in general?
 - a. If not, what more do you need to know about and how best can that information be communicated to you?
2. Have you or your organization participated in an EITI process in another country before?
 - a. If so, tell us more about that experience. What have you learned? What key steps or actions taken were successful or problematic and why, in your view?
3. For your company or organization, what key benefits do you think a final successful application to EITI will provide? For the country more generally?
4. For your company or organization, what key concerns or problems do you have about an EITI process for the U.S.?
5. Given the current state of reporting and accounting for payments flowing to the U.S. federal government for gas, oil, and minerals on federal and tribal lands,
 - a. What do you think are strengths of the current reporting system?
 - b. Weaknesses?
 - c. What kinds of improvements would you suggest to improve generally transparency, openness, and clarity?

Process

6. Given inherent complexity in the U.S. federal system and the presence of multiple extractive industries, can you comment on whether it makes sense to focus on
 - a. Federal, tribal and/or state land?
 - b. Gas/oil vs. and/or hard minerals?
 - c. Focusing on what kinds of revenues: royalties, rents, bonuses, taxes, other?
 - d. Should DOI leave these questions open or try to narrow them somewhat so the MSG has a starting point?
7. The EITI requires a multi-stakeholder group to be formed to oversee implementation. We want your advice on how best to convene that group.
 - a. Who are the key sectors and sub-sectors that you think need to be involved in the MSG?
 - b. What organizations can effectively represent many or most of the sectors you named?
 - c. What level of individual within an organization should participate?
 - d. What kinds of technical or other skills should participants have?
 - e. How should “balance” in regards to interests and perspectives within the group best be achieved?
 - f. How should smaller companies or groups of such companies be involved?
 - g. What is a reasonable “cut-off”, if any, by total payments per year per company (or some other metric) for participation in the EITI MSG itself and likely the responsibilities that will come out of developing the future requirements?
 - h. What might be the best way to convene the MSG?
 - i. Can your sector “self-organize” to select a representative and alternate?
 - ii. Should DOI provide an application process with categories of participants (say by sector) and selection criteria, let entities apply, and DOI select among them?
 - iii. Other
 - i. The intent is to name the group by early Summer 2012, get to work over the summer, hold the first meeting in early September 2012, and produce a work plan for submittal by December 21, 2012. Any thoughts on this timeline?
8. Anything else you want to add or share?

APPENDIX C: Input Needed from the Public on Assessment Findings and Recommendations

1. The MSG could be formed as a non-federal entity, a federal operating committee or other such legislatively-created entity, or a federal advisory committee. Which structure is most appropriate for forming the MSG and why?
2. Should an interim MSG be established to help engage stakeholders earlier and help consider or decide upon many of the questions and options raised in the assessment?
3. In the interest of balancing efficiency with representativeness, can the core MSG sectors of civil society, industry and government be sufficiently represented by five members and five alternates per sector as a starting point for the MSG?
4. Please comment on the nomination process outlined in the assessment. How best can DOI balance its role as convener with supporting an inclusive self-selection process among sectors?
5. Should states have representation on the MSG at the outset or serve as liaisons until scope of lands and payments have been finalized?
6. What should be the role of tribes and tribal allottees?
 - a. Should the MSG, once formed, consult directly with tribes to determine how to proceed early in its work plan?
 - b. Should the MSG establish a more formal, on-going consultation and engagement process with tribes and allottees, separate from broader public and constituency engagement?
 - c. Would it be best to include one or more tribal representatives, alternates, or observers on the MSG? Is it best to establish a separate tribal and allottee committee related to EITI to address the unique and specific needs of tribes and allottees?
 - d. Should the MSG establish a pilot approach in Indian Country to seek to initiate EITI with an interested tribe or tribes?
7. Other?